

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In re Application of )  
 )  
COMMUNITY EDUCATIONAL ASSOCIATION )  
Holly Hill, Florida )  
 )  
For a Construction Permit for a )  
New Noncommercial Educational FM )  
Station on Channel 212A )

MM Docket 94-88

File No. BPED-930316MF

RECEIVED

NOV 22 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

To: Honorable Joseph Chachkin  
Administrative Law Judge

MOTION FOR SUMMARY DECISION

Community Educational Association ("CEA"), by its counsel and pursuant to § 1.251 of the Commission's Rules, moves for summary decision on one of the two issues which remain to be resolved concerning CEA's application in the above-captioned proceeding. <sup>1</sup>

I. Background

1. CEA's application was mutually exclusive with the application of Cornerstone Community Radio ("CCR") and the two applications were designated for hearing. See Hearing Designation Order, DA 94-789, released August 2, 1994 (the "HDO"). In addition to the standard non-commercial educational FM comparative issues, the HDO specified the following two issues against CEA:

To determine whether CEA is a qualified educational organization proposing an acceptable educational format in compliance with 47 C.F.R. § 73.503(a) of the Commission's Rules.

To determine whether there is a reasonable possibility that the tower height and location proposed by CEA in this proceeding would constitute a hazard to air navigation.

---

<sup>1</sup> This motion is being filed more than twenty days before the scheduled commencement of the hearing, in accordance with § 1.251(a)(1) of the Rules. 47 C.F.R. § 1.251(a)(1).

No. of Copies rec'd  
List A B C D E

026

2. CEA filed an amendment to its application on August 30, 1994, proposing a new transmitter site and substituting Channel 201A for Channel 212A, the acceptance of which would have eliminated the mutual exclusivity between the CEA and CCR applications. The Presiding Judge accepted the amendment and, because no issues were specified against CCR, granted CCR's application. See Memorandum Opinion and Order, FCC 94M-521, released September 13, 1994. CEA's application remains in hearing status pending resolution of the two special issues. This Motion addresses only the § 73.503(a) issue.<sup>2</sup>

3. Summary decision movants must show "that there is no genuine issue of material fact for determination at the hearing." 47 C.F.R. § 1.251(a)(1). CEA submits that its application satisfies the requirements of § 73.503(a) of the Rules, and summary decision in its favor on that issue is appropriate.

II. CEA is a Qualified Educational Organization for Purposes of Section 73.503(a)

4. Section 73.503(a) of the Rules states that "a noncommercial educational FM broadcast station will be licensed only to a nonprofit educational organization and upon showing that the station will be used for the advancement of an educational program." 47 C.F.R. § 73.503(a). Eligibility and processing

---

<sup>2</sup> Contemporaneously with the filing of its August 30, 1994 amendment proposing a new site, CEA notified the FAA of its proposal by submitting an FAA Form 7640-1. CEA amended its FCC application on October 27, 1994 to report receipt of an FAA Acknowledgement of Notice of Proposed Construction or Alteration. On November 17, 1994, CEA amended its application to report receipt of notice from the FAA that the further study CEA requested had commenced.

guidelines for noncommercial educational applicants were set forth as Appendix A to the Notice of Inquiry in Docket 78-164, 433 FR 30842 (1978). Unlike educational institutional applicants, an educational organizational applicant need not be affiliated with a bona fide full-time school in the community of license, but must instead demonstrate that it has an educational goal and is committed to the advancement of an educational program. See Palm Bay Public Radio, 68 RR 2d 1566 (1991). The Commission has granted construction permits to applicants whose stated purpose was to develop educational programming for their community of license.<sup>3</sup>

5. When CEA filed its application, it's stated purpose was to "establish a facility that would provide non-commercial, educational FM service to the community of Holly Hill, Florida." See Exhibit 2 to BPED-930316MF ("Exhibit 2"). CEA said it would perform informal ascertainties to better determine the issues and concerns of the community. See Exhibit 1 to BPED-930313MF ("Exhibit 1"). CEA also stated "the percentage of time dedicated to news, public affairs and educational/instructional programming would compare favorably with the guidelines established by the F.C.C. in the Moody Bible Institute Case, 66 F.C.C. 2d 162, 40 RR 2d 1264 (1977)." Exhibit 2, supra.

6. CEA's main goals are to (i) improve relations between different cultural groups, with a special focus on Hispanic/Anglo relations, (ii) better educate and provide a forum for discussing

---

<sup>3</sup> See, e.g., construction permits issued to WZGX(FM), San German, PR (BPED-930317MA), WNZN(FM), Lorain, OH (BPED-8812815MJ), KBUT(FM) Crested Butte, CO (BPED-841105IB)

drug abuse, AIDS and the rise in violence in the community and on a national scale and (iii) provide "classes" in basic math and english, reading and health. See "Advancement of Educational Program Statement" filed as an amendment to CEA's application on October 13, 1994 (the "Statement"). To further these goals, CEA's educational program will integrate the operation of its station with the educational community and civic leadership in the Holly Hill area.

7. CEA will work with community leaders to organize forums for teenagers with adult moderators to facilitate open discussions of community problems such as violence and drug abuse. Statement at p. 1. CEA also proposes to work with local schools and community organizations to present workshops on topics such as health care, bridging the gap between different cultures and languages, family life and the importance of staying in school. Id. These forums and workshops will become part of the programming on CEA's new station. See Declaration of Jose Mercado, attached as Exhibit A ("Declaration"). CEA will also work with educational administrators and teachers to develop a "Radio School." Written material will be developed by the educators and the radio station will broadcast "classes" in such basic skills as english, math, reading and health. Programs will be developed and broadcast in both English and Spanish. Statement at p. 1.

8. A non-commercial FM applicant that is an educational organization does not have to provide a program-by-program inventory in its application. The applicant must provide a

statement of proposed programming policies, a willingness to respond to the needs and interests of the community and an illustrative list of program topics. Palm Bay at 1569. <sup>4</sup> In Palm Bay, an educational organization applicant pledged to develop programming to educate and to develop local performing artists and to educate its listeners with respect to veterans' benefits and procedures. Id. The Commission found that applicant qualified under § 73.503(a) of the Rules and eligible to operate a non-commercial station based on the list of representative programs it presented and its assertion that it would "provide educational programming and programming responsive to the needs and interests of the Palm Bay community." Id.

9. CEA set forth its general programming policies in Exhibit 2, its purpose in Exhibit 1 and in the Agreement and identified specific issues and educational topics it would address in the programming of its station in the Statement. CEA has amply demonstrated its qualifications as an eligible educational organization. See Lower Cape Communications, Inc., 47 RR 2d 1577 (1980). (Principals lacking an educational nexus with stated purpose to establish non-commercial educational radio station found qualified to operate reserved band station). Its representations demonstrate specific educational goals and a commitment to advance

---

<sup>4</sup> The requirements for reserved band television applicants are much more stringent because a television station utilizes much more frequency and reserved band television allotments are more scarce. See Way of the Cross of Utah, Inc., 58 RR 2d 455 (1985).

those goals. CEA's will monitor its progress in addressing issues of community concern through an informal ascertainment process.

III. CEA is Entitled to Summary Decision on the § 73.503(a) Issue

10. To grant summary decision on an issue, the Presiding Judge must determine that there are no genuine issues of material fact for determination at an evidentiary hearing. 47 C.F.R. §1.251(a). CEA has placed before the Presiding Judge an application which describes CEA's organization and purpose as well as its commitment to the advancement of an educational program. Its application sets forth its proposed programming in sufficient detail to satisfy § 73.503(a) of the Rules. Palm Bay, supra. The representation made in the application are all supported by the Declaration of CEA's president, Jose Mercado. See Exhibit A.

11. In David Ortiz v. F.C.C., 941 F2d 1253 (D.C. Cir. 1991), an applicant defended a misrepresentation of site availability issue with an unrefuted affidavit describing his actions and intent. The Presiding Judge had granted summary decision in the issue based on the applicant's affidavit, and the Commission, then the Court upheld the Presiding Judge's decision. In this case, Mercado's Declaration supports the representations CEA has placed before the Commission concerning its qualifications to hold the license for a reserved FM channel. The evidence is conclusive, and unrefuted. There is no factual issue that needs to be resolved in a hearing before there could be a finding that CEA is in compliance

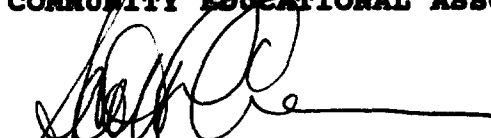
with § 73.503(a) of the Rules, so summary decision on this issue is appropriate. See Webster-Fuller Communications Association, 65 RR 2d 1068 (Rev. Bd. 1988).

#### IV. Conclusion

12. CEA has demonstrated in its application and subsequent amendments, as supported by the Declaration of its president Jose Mercado, that it is a bona fide educational organization proposing specific educational goals and a plan to advance those goals. CEA has provided a sufficient representative sampling of the types of topical (news and information) and educational programming it will offer. Based on the evidence, CEA is entitled to summary decision on the outstanding § 73.503(a) issue.

WHEREFORE, it is respectfully requested that the Presiding Judge issue an Order granting summary decision in favor of CEA on the pending Section 73.503(a) issue.

Respectfully submitted,  
COMMUNITY EDUCATIONAL ASSOCIATION



\_\_\_\_\_  
Scott C. Cinnamon  
Its Counsel

**BROWN NIETERT & KAUFMAN**  
1920 N Street, N.W.  
Suite 660  
Washington, D.C. 20036

(202) 887-0600

November 22, 1994

### DECLARATION

I, Jose Mercado, under penalty of perjury and pursuant to Section 1.16 of the Commission's Rules, do hereby declare:

1. I am the president and 1/3 member of Community Educational Association ("CEA"), an applicant for a new non-commercial educational FM Station to serve the community of Holly Hill, Florida. CEA was created by Orlando Mercado, Clara E. del Toro and myself as a non-profit educational organization to develop educational programming responsive to the needs of the Holly Hill community. We intend to integrate the programming of the radio station with local activities and events which will allow us not only to ascertain issues of importance in the community, but also to address them.

2. We prepared our original application in consultation with engineers and attorneys who advised us concerning FCC rules, regulations and policies concerning engineering, programming and special non-commercial educational rules. Our attorney explained how applications for non-commercial educational FM stations would be judged, and we prepared the application and exhibits and filed the finished application with the FCC on March 16, 1993.

3. In August 1994, the FCC informed CEA that its application was mutually exclusive with the application of Cornerstone Community Radio, Inc. ("CCR") and designated both applications for hearing. The FCC also added a special issue against CEA to determine whether CEA is qualified to be a non-commercial educational licensee and whether whet CEA said about its programming was sufficient.



4. We consulted with our engineers and attorneys who advised us to, as a first step, try to find a way to resolve the mutual exclusivity between the two applications. We asked our engineer to find a way for us to amend our application to resolve the mutual exclusivity so that both applications could be granted. The engineer was successful and on August 30, 1994, CEA filed an engineering amendment to its application which resolved the mutually exclusivity between its application and the application of CCR. On September 13, 1994, the Judge granted the CCR application. Our attorney has explained that our application cannot be granted until the two issues designated against it are resolved.

5. Since the CEA application was filed, we have filed two amendments which relate to our educational goals and purpose. On September 2, 1994, we filed an amendment which included our Organization and Board of Directors Agreement and on October 13, 1994, we filed an amendment with our Advancement of Educational Program Statement. In the Agreement, we intended to clarify our aims and objectives in acquiring this radio station. It is our intention to use the station to provide educational and informative programming to the residents of the Holly Hill community, and to integrate the operation of the station with the community. We will conduct informal ascertainties of local community leaders and educational professionals to determine the important issues and problems of residents of Holly Hill, and create programming responsive to those issues.

6. In the Statement we identified issues which we believe to be important and programming we believe will be responsive. For

example, we believe violence, drug abuse and AIDS are important problems that we can help the community address. We propose to have forums with children and adults as active participants, and we plan to broadcast these forums over our station. We plan to develop a "Radio School" with local educators assisting in the development of course material. We intend to offer classes in basic math, english, reading and health care.

7. We also plan to offer panel discussions to our listeners exploring the different cultures and heritages of the residents of Holly Hill in an attempt to increase social awareness and improve relations between different ethnic groups, with a special focus of Hispanic/Anglo relations. To that end, we plan to offer programming in both English and Spanish. In addition to our locally produced educational, instructional and public affairs programming, we plan to offer national and local news and information programming and entertainment programming. In addition to our programming mission, we will make the station available for students and members of the community interested in learning about radio broadcasting.

Executed this 21st day of November 1994

*José Mercado*

---

José Mercado, President  
Community Educational Association

**CERTIFICATE OF SERVICE**

I, Scott C. Cinnamon, do certify that on this 22nd day of November, 1994, a copy of the foregoing **MOTION FOR SUMMARY DECISION** was sent via first class mail, postage pre-paid or delivered, as indicated, to the parties set forth below:

Honorable Joseph Chachkin  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 221  
Washington, D.C. 20554 \*

Y. Paulette Laden, Esq.  
Hearing Branch  
Federal Communications Commission  
STOP CODE 1800C4  
2025 M Street, N.W., Room 7212  
Washington, D.C. 20554 \*\*



Scott C. Cinnamon

- \* - Hand Delivery
- \*\* - via FCC Mailroom